

PAYNE & FEARS LLP
ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CALIFORNIA 92614
(949) 851-1100

1 Daniel F. Fears, Bar No. 110573
E-mail: dff@paynefears.com
2 Laura Fleming, Bar No. 219287
E-mail: lf@paynefears.com
3 Sean A. O'Brien, Bar No. 133154
E-mail: sao@paynefears.com
4 Rhianna S. Hughes, Bar No. 266396
E-mail: rsh@paynefears.com
5 PAYNE & FEARS LLP
4 Park Plaza, Suite 1100
6 Irvine, California 92614
Telephone: (949) 851-1100
7 Facsimile: (949) 851-1212

8 Attorneys for Defendants
ABM INDUSTRIES INCORPORATED; and
9 *Former* ABM ONSITE SERVICES - WEST, INC.

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12
13 YAJAIRA LOPEZ,

14 Plaintiff,

15 vs.

16 ABM ONSITE SERVICES - WEST,
INC., a Delaware corporation; ABM
17 INDUSTRIES INCORPORATED, a
Delaware corporation; and DOES 1
18 through 100, inclusive,

19 Defendants.
20
21

Case No. 2:17-cv-5079

*[Los Angeles Superior Court, Case No.
BC664924]*

**PETITION AND NOTICE OF
REMOVAL OF CIVIL ACTION
UNDER 28 U.S.C. §§ 1331 AND 1441
[DIVERSITY JURISDICTION]**

22 TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
23 DISTRICT OF CALIFORNIA, AND TO PLAINTIFF, AND HER COUNSEL OF
24 RECORD:

25
26 PLEASE TAKE NOTICE that Defendants ABM INDUSTRIES
27 INCORPORATED and *former* ABM ONSITE SERVICES - WEST, INC. (“ABM”
28 or “Defendants”) hereby remove this action from the Superior Court of the State of

1 California for the County of Los Angeles to the United States District Court for the
2 Central District of California, on the following grounds:

3 4 INTRODUCTION

5
6 1. This Court has jurisdiction over this action under 28 U.S.C. § 1332 and
7 28 U.S.C. § 1441. As detailed below, complete diversity exists between Plaintiff
8 YAJAIRA LOPEZ (“Plaintiff”) and ABM. In addition, the amount in controversy
9 exceeds \$75,000. Pursuant to 28 U.S.C. § 1446(b)(3), this case is being removed
10 within thirty (30) days of ABM’s receipt of a paper from which it could first be
11 ascertained that the case was one which is or has become removable. (See **Exhibit**
12 **F**; Declaration of Laura Fleming (“Fleming Decl.”) ¶ 7.) Accordingly, this Court
13 has jurisdiction over this matter and removal is proper.

14 15 THE STATE COURT ACTION

16
17 2. On or about June 14, 2017, Plaintiff filed an action titled “YAJAIRA
18 LOPEZ, an individual, v. ABM ONSITE SERVICES – WEST, INC., a Delaware
19 Corporation; ABM INDUSTRIES INCORPORATED, a Delaware corporation; and
20 Does 1 through 100, inclusive” in the Superior Court of the State of California,
21 County of Los Angeles, Case No. BC664924 (the “State Court Action”). A true and
22 correct copy of the Complaint that was filed on June 14th in the State Court Action
23 is attached hereto as **Exhibit A** (see also Fleming Decl. ¶ 2).

24
25 3. On June 15, 2017, Defendant ABM Industries Incorporated was served
26 with the Summons and Complaint through its registered agent in the State of
27 California. A true and correct copy of the Service of Process Transmittal is attached
28 hereto as **Exhibit B** (see also Fleming Decl. ¶ 3).

1 4. On June 15, 2017, Defendant former ABM Onsite Services – West, Inc.
2 was served with the Summons and Complaint through its registered agent in the
3 State of California. A true and correct copy of the Service of Process Transmittal is
4 attached hereto as **Exhibit C** (*see also* Fleming Decl. ¶ 4).

5
6 5. On or about June 28, 2017, Plaintiff served a Notice of Case
7 Management Conference on ABM, providing that a case management conference in
8 the State Court Action is scheduled for October 12, 2017 at 8:30 a.m. A true and
9 correct copy of this notice is attached hereto as **Exhibit D** (*see also* Fleming Decl.
10 ¶ 5).

11
12 6. On or about June 28, 2017, Plaintiff served a Notice of Intent to Appear
13 by Telephone at Case Management Conference on ABM. A true and correct copy
14 of this notice is attached hereto as **Exhibit E** (*see also* Fleming Decl. ¶ 6).

15
16 7. On June 29, 2017, Plaintiff served a Statement of Damages on ABM,
17 alleging damages in excess of \$75,000. A true and correct copy of the Statement of
18 Damages is attached hereto as **Exhibit F** (*see also* Fleming Decl. ¶ 7).

19
20 8. On or about July 7, 2017, ABM filed and served its Answer to the
21 Complaint in the Superior Court of California, County of Los Angeles. A true and
22 correct copy of the Answer filed is attached hereto as **Exhibit G** (*see also* Fleming
23 Decl. ¶ 8).

24
25 9. The Summons/Complaint, Service of Process Transmittals, Notice of
26 Case Management Conference, Notice of Intent to Appear by Telephone at Case
27 Management Conference, Statement of Damages, and Answer to the Complaint,
28

1 attached as **Exhibits A through G** hereto, constitute the pleadings, process, and
2 orders served upon ABM in the State Court Action.

3
4 10. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) and
5 Rule 6 of the Federal Rules of Civil Procedure, in that ABM originally received a
6 copy of the Statement of Damages on July 5, 2017, no more than thirty (30) days
7 before the filing of this Notice.

8
9 **COMPLETE DIVERSITY EXISTS BETWEEN PLAINTIFF AND ABM**

10
11 8. If a party is a corporation, it is a citizen of both its state of
12 incorporation and the state where it has its principal place of business. 28 U.S.C.
13 § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 80, 130 S.Ct. 1181, 1186 (2010)
14 (“we conclude that the phrase ‘principal place of business’ refers to the place where
15 the corporation’s high level officers direct, control, and coordinate the corporation's
16 activities”).

17
18 9. Defendant ABM Industries Incorporated is incorporated in the State of
19 Delaware, and is headquartered and maintains its corporate headquarters and
20 principal place of business in New York, where its “officers direct, control, and
21 coordinate the corporation’s activities” 28 U.S.C. § 1332(c)(1); *Hertz Corp. v.*
22 *Friend*, 559 U.S. 77, 92-93 (2010)); (*see* Declaration of Nedy Warren (“Warren
23 Decl.”) ¶ 8). Accordingly, ABM Industries Incorporated is a citizen of both
24 Delaware and New York.

25
26 10. Defendant former ABM Onsite Services-West, Inc. (“ABM OSW”)
27 was incorporated in the State of Delaware and was headquartered and had its
28 principal place of business in Texas, where its “officers direct[ed], control[led], and

1 coordinate[d] the corporation's activities" 28 U.S.C. § 1332(c)(1); *Hertz Corp.*,
2 559 U.S. at 92-93); (*see* Warren Decl. ¶ 6). Accordingly, former ABM OSW was a
3 citizen of both Delaware and Texas.

4
5 11. From January 1, 2014 through December 31, 2016, Defendant ABM
6 OSW owned and operated a janitorial line of business in California, under which it
7 employed Plaintiff and other employees. (Warren Decl. ¶ 5.) Effective January 1,
8 2017, ABM OSW was merged out of existence, and a majority of its non-exempt,
9 hourly California janitorial employees were contributed to ABM Industry Groups,
10 LLC. (*Id.* ¶ 7.) A wholly-owned subsidiary of ABM Industries Incorporated, ABM
11 Industry Groups, LLC, is a Delaware company with its principal place of business in
12 Texas. (*Id.*)

13
14 12. ABM affirmatively asserts that Plaintiff is a citizen of the State of
15 California, and was a citizen of California at the time of the filing of the Complaint.
16 Further, Plaintiff is not a citizen of Delaware or Texas and was not at the time of the
17 filing of the Complaint.

18
19 13. Plaintiff alleges that she worked for ABM from 1980 through 2016.
20 (Exhibit A at ¶¶ 10, 17.) Plaintiff also alleges that, "[a]t all relevant times" to the
21 action, she was and is "a resident of Los Angeles County California." (*Id.* at ¶ 1.)
22

23 14. While "[r]esidence alone is not the equivalent of citizenship ... the
24 place of residence is *prima facie* the domicile." *State Farm Mut. Auto. Ins. Co. v.*
25 *Dyer*, 19 F.3d 514, 520 (10th Cir. 1994); *see also Hester v. Horowitz*, No. 14-00413
26 JMS-KLP, 2015 WL 127890, at *2 (D. Haw. Jan. 8, 2015) ("Although residence
27 alone is not the equivalent of citizenship, the place of residence is *prima facie* the
28 domicile."). It is presumed that a natural person's residence is also her domicile,

1 and a party resisting this presumption bears the burden of producing contrary
2 evidence. *State Farm*, 19 F.3d at 519; *Lew v. Moss*, 797 F.2d 747, 751 (9th Cir.
3 1986).

4
5 15. To establish citizenship of a natural person for diversity purposes, the
6 party must be both a citizen of the United States and a domiciliary of one particular
7 state. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A
8 person's "domicile" is the place where he or she resides, with the intent to remain or
9 to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing
10 *Lew*, 797 F.2d at 749. Domiciliary is determined at the time the lawsuit was filed.
11 *Stroteck Corp. v. Air Transp. Ass'n. of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002).

12
13 16. Since ABM Industries Incorporated is domiciled in New York and
14 Delaware, ABM OSW is domiciled in Delaware and Texas, ABM Industry Groups,
15 LLC is domiciled in Delaware and Texas, and Plaintiff is domiciled in California,
16 complete diversity exists between Plaintiff and ABM.

17
18 **THE AMOUNT IN CONTROVERSY EXCEEDS THE JURISDICTIONAL**
19 **MINIMUM**
20

21 17. This Court's jurisdictional minimum amount that must be in
22 controversy is any amount in excess of \$75,000. 28 U.S.C. § 1332(a)(1).
23

24 18. Plaintiff's complaint does not state a specific amount in controversy.
25 (See Exhibit A; see also Fleming Decl. ¶ 2.)
26
27
28

1 19. On June 29, 2017, Plaintiff served a Statement of Damages on ABM
2 alleging damages in excess of \$75,000.00. (*See* Exhibit F; *see also* Fleming Decl.
3 ¶ 7.)
4

5 20. Within 30 days of service of Plaintiff's Statement of Damages, ABM
6 removed this action to federal court.
7

8 **REMOVAL IS TIMELY**
9

10 21. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).
11 This case is being removed within thirty (30) days of ABM's receipt of Plaintiff's
12 Statement of Damages, which is the first paper from which ABM could ascertain
13 that the amount in controversy exceeds \$75,000. Therefore, this Notice is timely
14 because it is filed within thirty (30) days of becoming removable, and within one (1)
15 year of commencement of the action.
16

17 **CONCLUSION**
18

19 22. For the reasons stated above, this Court has jurisdiction under 28
20 U.S.C. §1332 because this is a civil action between citizens of different states, and
21 the matter in controversy exceeds \$75,000, exclusive of interest and costs.
22

23 23. Accordingly, ABM respectfully requests that this Court exercise its
24 removal jurisdiction over this action.
25
26
27
28

PAYNE & FEARS LLP
ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CALIFORNIA 92614
(949) 851-1100

1 DATED: July 11, 2017

PAYNE & FEARS LLP

2
3
4 By: /s/ Laura Fleming
LAURA FLEMING

5
6 Attorneys for Defendants
7 ABM INDUSTRIES INCORPORATED;
8 and *Former* ABM ONSITE SERVICES -
9 WEST, INC.

10 4832-5124-8458.1

INDEX OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
"A"	Summons and Complaint filed in <i>Yajaira Lopez v. ABM Onsite Services – West, Inc., et al.</i> , Case No. BC664924.
"B"	Service of Process Transmittal, dated June 15, 2017, of the Summons and Complaint on Defendant ABM Industries Incorporated's registered agent in the State of California.
"C"	Service of Process Transmittal, dated June 15, 2017, of the Summons and Complaint on Defendant ABM Onsite Services – West, Inc.'s registered agent in the State of California.
"D"	Notice of Case Management Conference, served by Plaintiff on ABM on or about June 28, 2017.
"E"	Notice of Intent to Appear by Telephone at Case Management Conference, served by Plaintiff on ABM on or about June 28, 2017.
"F"	Statement of Damages, served by Plaintiff on ABM on or about June 29, 2017.
"G"	Answer to the Complaint, filed and served by ABM on or about July 7, 2017

PROOF OF SERVICE

Yajaira Lopez v. ABM Onsite Services - West, Inc. et al.
United States District Court-Central District, Case No. 2:17-cv-5079,
[Removed from Los Angeles Superior Court, Case No. BC664924]

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Orange, State of California. My business address is 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On **July 11, 2017**, I served true copies of the following document(s) described as **PETITION AND NOTICE OF REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. §§ 1331 AND 1441**, on the interested parties in this action as follows:

Kevin A. Lipeles, Esq.
Thomas H. Schelly, Esq.
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 22-2211
Fax: (310) 322-2252

Attorney for Plaintiff
YAJAIRA LOPEZ

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Payne & Fears LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 11, 2017**, at Irvine, California.



Maritza I. Hulke